

Message Text

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ACTION STR-04

INFO OCT-01 ARA-06 EA-07 IO-10 ISO-00 L-03 AGR-05 CIAE-00

COME-00 EB-07 INR-07 LAB-04 NSAE-00 SP-02 TRSE-00

CIEP-01 FRB-03 OMB-01 STRE-00 /061 W

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FM USMISSION GENEVA

TO SECSTATE WASHDC PRIORITY 6789

INFO AMEMBASSY CANBERRA

AMEMBASSY PORT AU PRINCE PRIORITY

AMEMBASSY MANILA

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PORT AU PRINCE PASS MIKE SMITH AND TEXTILE DEL

E.O. 11652: NA

TAGS: GATT ETRD RP AS

SUBJ: TEXTILES-AUSTRALIA/PHILIPPINE DISPUTE

REF: STATE 265023

1. AS MIGHT HAVE BEEN EXPECTED, TSG DIRECT HEARING AND QUESTIONING AUSTRALIAN AND PHILIPPINE REPS (NOV 10-11), REVEALED SEVERAL NEW ELEMENTS IN DISPUTE WHICH LEAD US REP TO CONCLUSION THAT BOTH SIDES HAVE PAID CONSIDERABLY MORE ATTENTION TO THEIR "RIGHTS" UNDER MFA THAN THEY HAVE TO THEIR OBLIGATIONS THEREUNDER.

2. AFTER ALL EVIDENCE IS IN, AUSTRALIAN JUSTIFICATION FOR ART 3 ACTION, WHICH WOULD HAVE TO BE FOUND IN ""CUMULATIVE" CONCEPT DISRUPTION IF IT COULD BE FOUND AT ALL, WAS CERTAINLY QUESTIONABLE AT TIME TAKEN EVEN ON "CUMULATIVE" BASIS. HOWEVER, BY TIME AUSTRALIANS DECIDED TAKE ACTION (AUG 28), IMPORTS FROM PHILIPPINES AND OTHER SOURCES HAD REACHED LEVELS WHERE THEY COULD BE FAIRLY CONSTRUED AS POSING

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"ACTUAL THREAT" OF SERIOUS DAMAGE, THUS CLEARLY MEETING ANNEX

A CRITERIA.

3. IT EVIDENT THAT PERIOD BETWEEN REQUEST FOR CONSULTATIONS AND GOA DECISION TAKE UNILATERAL ACTION WAS UTILIZED TO MAXIMUM BY PHILIPPINE EXPORTERS AND AUSTRALIAN IMPORTERS TO BUILD UP BASE AND/OR TRY GET GOODS IN BEFORE RESTRICTIONS BECAME EFFECTIVE.

4. CONCLUSION MAY ALSO BE DRAWN THAT GOP POSITION IN MAY CONSULTATIONS/NEGOTIATIONS MAY HAVE BEEN BASED ON MISTAKEN BELIEF THAT APPLICATION "CUMULATIVE MARKET DISRUPTION CONCEPT" WAS NOT PERMISSIBLE UNDER MFA. GOA DEL, IN FACT, TOLD GOP DEL THAT PHILIPPINE EXPOERTS WERE NOT DISRUPTIVE PER SE BUT WERE ADDITION TO DISRUPTION CAUSED BY IMPORTS FROM MANY SOURCES. GOP DEL'S ONLY RESPONSE TO TWO GOA OFFERS OF LIMITS SUBSTANTIALLY IN EXCESS OF ROLL-BACK PERIOD LEVELS, WAS TO IN-SIST ON LEVEL EQUAL TO 10 PERCENT OF AUSTRALIAN TOTAL IMPORTS PRODUCTS IN QUESTION. IN OCT SECOND ROUND NEGOTIATIONS (RECOMMENDED BY TSB), GOA, HAVING RESTRICTIONS IN PLACE AND HAVING MORE VALID EVIDENCE CUMULATIVE DISRUPTION IN THEIR MARKET, OPENED TALKS WITH OFFER LESS THAN LAST OFFER MADE IN MAY NEGOTIATIONS. THIS APPARENTLY CONVINCED GOP DELS THAT GOA WAS DEFYING TSB RECOMMENDATIONS AND, IN EFFECT, NOT NEGOTIATING IN GOOD FAITH. GOP BROKE OFF TALKS AND RETURNED TO TSB.

5. IN DEBATING EVIDENCE PRESENTED THIS SESSIO, EXPORT-ING COUNTRY REPS LED BY DORWARD (HONG KONG) AND SUPPORTED BY MIZOGUCHIA (JAPAN) HAVE MAINTAINED: A) THAT TRADE DEVELOPMENTS IN PERIOD BETWEEN REQUEST FOR CONSULTATIONS AND DECISION TO IMPOSE RESTRAINTS WERE IRRELEVANT IN CON-SIDERATION JUSTIFICATION RESTRAINTS; B) THAT THERE WAS NO EVIDENCE PRESENTED WHICH INDICATED ANY SERIOUS DAMAGE BY IMPORTS FROM PHILIPPINES; C) THAT IN THEIR INTERPRETATION ANNEX A, IT INCUMBENT ON GOA SHOW THAT IMPORTS FROM PHILIPPINES PER SE WERE DISRPUTING AND CAUSING SERIOUS DAMAGE; D) THAT "LOW LEVELS" OF IMPORTS FROM PHILIPPINES AT TIME GOA TOOK ACTION DID NOT EVEN POSE THREAT; AND E) THAT, FOR FOREGOING REASONS, LIMITED OFFICIAL USE

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TSB HAD NO CHOICE BUT TO FIND GOA RESTRICTIONS UNJUSTIFIED.

6. US, EC AND CANADA REPS DID AND ARE CONTINUING TO REJECT AS TOTALLY UNACCEPTABLE ANY FINDING OR RECOMMENDATIONS WHICH WOULD IN ANY WAY PREJUDICE OR INVALIDATE THE CUMULATIVE CONCEPT. AT SAME TIME, US REP, EC AND CANADA REPS ARE TRYING JOINTLY FIND A CONCLUSION WHICH: A) WILL PRESERVE CUMULATIVE CONCEPT; AND, B)

WILL DETER EITHER GOP OR GOA FROM RAISING EXPLOSIVE
ISSUES CUMULATIVE CONCEPT AND RELATIONSHIP ARTICLES
3 AND 6 IN TC. EITHER OF THESE ISSUES WOULD OPEN PANDORA'S
BOX IN TC WITH TOTALLY UNPREDICTABLE RESULTS.

7. US REP (AS HAVE EC AND CANADA REPS) HAS INFORMED
TSB CHAIRMAN THAT US, EC AND CANADA REGARD THIS CON-
FLICT WITHIN TC AS SO SERIOUS THAT ANY FINDINGS OR
RECOMMENDATIONS BASED ON TSB "CONSENSUS" WOULD HAVE TO
BE CONSIDERED BY WASHINGTON, OTTAWA AND BRUSSELS. WE
HAVE ALSO INFORMED OTHER COLLEAGUES OF THIS CONCERN,
TALKS BETWEEN INDIVIDUAL MEMBERS AND BETWEEN IMPORTING
COUNTRY AND EXPORT COUNTRY REPS ARE CONTINUING ON
ROUND-THE-CLOCK BASIS.

8. US REP WILL REPORT TODAY'S DISCUSSIONS IN SEPTTEL
FOLLOWING AND, HOPEFULLY, MAY HAVE SOME WORKABLE RECOM-
MENDATION SUBMIT FOR WASHINGTON CONSIDERATION. DALE

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